

- (1) The issue raised on appeal is one subject to review on appeals from preliminary orders. K.S.A. 44-534a.

(2) Claimant has failed to meet her burden to establish that her injuries arose out of and in the course of her employment with the respondent.

Claimant seeks benefits for bilateral upper extremity injuries allegedly caused by repetitive activities in the course of her employment for the respondent. Claimant has had two prior workers compensation claims. The first was for bilateral injury to her upper extremities, diagnosed as tenosynovitis. The alleged date of injury was June 29, 1990. The second claim alleged July 3, 1991 as the date of accident and the injury was a ganglion cyst to the left hand. Both claims were settled for lump-sum payments. Claimant, thereafter, worked for respondent through April 26, 1994. Her duties for respondent during that time included driving a forklift, climbing ladders, hooking up and disconnecting tank cars and lifting bags of flour. Claimant testified that as a result of the work the symptoms seemed to get worse and the pain was more intense in certain ways.

Claimant was terminated from her employment with respondent on April 26, 1994, for reasons unrelated to this claim. She did not seek medical attention until she was referred to Dr. Lanny W. Harris by her current attorney in August of 1995. Dr. Harris had been the treating physician for the prior injuries. Dr. Harris concludes and the notes of his exam indicate that her symptoms are worse than they were in 1991. He does not, however, attribute the worsening of symptoms to any particular activity. The evidence also shows that claimant's symptoms were aggravated by a variety of activities both at home and in employment with employers after she left her work for respondent. She worked for four separate employers after leaving her work for respondent and several of those employments required significant repetitive work with her upper extremities. She testified that the work for these other employers also aggravated her condition and worsened her symptoms. According to her own testimony the work at home also worsened her symptoms. Claimant's counsel points to the testimony that her symptoms subsided after her subsequent employment. This testimony, however, falls short of eliminating the other jobs as the likely cause of her injury in light of her previous testimony that her other jobs aggravated and worsened her symptoms.

The Appeals Board finds that the record as a whole does not establish more probably than not that the work for respondent was the cause of claimant's current need for medical treatment and temporary total disability benefits. The decision by the Administrative Law Judge is, therefore, affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Alvin E. Witwer dated January 4, 1996 should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: David R. Hills, Lenexa, KS
Gary R. Terrill, Overland Park, KS
Fred J. Logan, Jr., Prairie Village, KS
Alvin E. Witwer, Administrative Law Judge
Philip S. Harness, Director